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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,488	04/26/2001	Vincent Pluvinage	RXSD1001-3	8079
22470	7590	03/07/2007	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP			BATES, KEVIN T	
P O BOX 366			ART UNIT	PAPER NUMBER
HALF MOON BAY, CA 94019			2155	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/830,488	PLUVINAGE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Kevin Bates	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 February 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 146, 148, 174-179 and 189-196 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 146, 148, 174-179, and 189-196 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This Office Action is in response to a communication made on February 14, 2007.

Claims 1-145, 147, 149-173, 180-188 have been cancelled.

Claims 146, 148, 174-179, and 189-196 are pending in this application.

***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 146, 148, 174-175, 178-179, 189, 191-193, and 195-196 are rejected under 35 U.S.C. 102(e) as being anticipated by Berger (6684063).**

**Regarding claim 146,** Berger teaches a device for producing customized audio data (Column 2, lines 2 – 3), comprising:

A headset, the headset including processing resources mounted thereon (Column 6, lines 23 – 28), including

a data processor (Column 6, lines 23 – 28); a data storage medium, coupled to the data processor, storing a hearing profile of a customer (Column 2, lines 54 – 59; see also Column 3, lines 41 – 45);

an audio transducer (Column 6, lines 23 – 28, the ADC, amplifier, and the speaker), coupled to the data processor; a communication port coupled to the processor (Column 6, lines 26 – 27; the antenna);

logic to produce customized audio data, by processing audio data received on the communication port from an external source using the hearing profile (Column 2, lines 54 – 65); and

a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user interface supporting an interactive process to provide the hearing profile (Column 3, lines 20 – 38).

**Regarding claim 174**, Campbell teaches a method for producing a hearing profile, comprising:

providing a headset having an audio transducer (Column 6, lines 23 – 28); coupling the headset via a communication channel to an external data processor having a user interface (Column 6, lines 23 – 28); executing an interactive process using the user interface and the audio transducer to develop a hearing profile (Column 3, lines 20 – 38);

producing a customized audio data product using the hearing profile (Column 2, lines 54 – 65); and

playing the customized audio data product on the headset (Column 1, lines 63 – 67).

**Regarding claim 148**, Berger teaches the audio data playback device of claim 146, wherein that the audio transducer comprises stereo speakers (Column 6, lines 25 – 27).

**Regarding claim 175**, Campbell teaches the device of claim 174, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product (Column 2, lines 54 – 65).

**Regarding claim 178**, Campbell teaches the device of claim 174, including: logic to store the customized audio data product on a machine readable medium (Column 6, lines 5 – 10).

**Regarding claim 179**, Campbell teaches the audio testing device of claim 174, indicate a port adapted to couple a removable data storage device to the data processor, and resources for playing an audio data product stored in the removable data storage device (Column 6, lines 5 – 10).

**Regarding claims 189 and 193**, Berger teaches the playback device of claims 146 and 174, wherein the hearing profile is provided by an interface allowing selection by the user according to personal preferences (Column 3, lines 20 – 38).

**Regarding claims 191 and 195**, Berger teaches the playback device of claims 146 and 174, including a computer program stored on the data storage medium

executable by the processor to communicate with an external data processing device providing a user interface supporting an interactive process to modify the hearing profile (Column 3, lines 20 – 38).

**Regarding claims 192 and 196,** Campbell teaches the playback device of claims 146 and 174, wherein the communication port comprises a port for wireless communication (Column 6, lines 25 – 27).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 176, 177, 190, and 194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger in view of Campbell (6212496).**

**Regarding claim 176,** Berger teaches the device of claim 174.

Berger does not explicitly indicate an interface by which the customized audio data product is received from a remote site.

Campbell teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) an interface by which the customized audio data product is received from a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the

profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

**Regarding claim 177**, Berger teaches the device of claim 174.

Berger does not explicitly indicate wherein the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site.

Campbell teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

**Regarding claims 190 and 194**, Berger teaches the device of claims 146 and 174.

Berger does not explicitly indicate the hearing profile is provided using the interface according to a hearing test.

Campbell teaches teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the hearing profile is provided using the interface according to a hearing test (Column 5, line 60 – Column 6, line 19).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of performing a hearing test in Berger's in order to create new hearing profiles or prescriptions for the user rather than having to have preprogrammed profiles.

**Claim 174 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (6,212,496) in view of Adams (6594366).**

Regarding claim 174, Campbell teaches a method for producing a hearing profile, comprising:

an audio transducer (Column 2, lines 54 – 56);  
an external data processor having a user interface (Column 2, lines 46 – 49);  
executing an interactive process using the user interface and the audio transducer to develop a hearing profile (Column 5, line 60 – Column 6, line 19);  
producing a customized audio data product using the hearing profile (Column 3, lines 14 – 16); and  
playing the customized audio data product on the headset (Column 2, lines 54 – 56).

Campbell does not explicitly indicate that its audio processor includes a headset.

Adams teaches a cellphone with the ability to use the audio transducer in a headset (Column 2, lines 20 – 25; lines 32 – 36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Adam's teaching of a headset connected to a cellphone with Campbell's cellular device in order to enable the use of earphones to hear the audio being produced.

### ***Response to Arguments***

Applicant's arguments regarding claim 174 have been fully considered but they are not persuasive.

The applicant asserts that coupling the headset via a communication channel to an external data process is equivalent to having the processor mounted on the headset. The examiner disagrees, a communication channel, is broad enough to include any times a connections between any electronic device including a headphone jack and wireless network.

Applicant's arguments with respect to claim 146 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB  
March 2, 2007



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SUPERVISORY PATENT EXAMINER